

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

-----X
ADIL KHALIL,

Plaintiff,

-against-

PRATT INSTITUTE,

Defendant.
-----X

★ MAR 04 2019 ★

LONG ISLAND OFFICE

ORDER
16-CV-6731 (JFB) (SIL)

JOSEPH F. BIANCO, District Judge:

On February 13, 2019 Magistrate Judge Locke issued a Report and Recommendation (the "R&R," ECF No. 55) recommending that the Court grant in its entirety the motion to dismiss plaintiff's second amended complaint filed by defendants (ECF No. 45) and grant plaintiff leave to amend his complaint a second time. The R&R was served on plaintiff on February 14, 2019. (ECF No. 56) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (R&R 23.) The date for filing any objections has thus expired, and plaintiff has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety, granting in part and denying in part defendant's motion to dismiss. The Court grants plaintiff thirty (30) days to amend his complaint.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district

court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'" (quoting *Thomas*, 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the analysis and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss (ECF No. 45) is granted in its entirety, without prejudice.

IT IS FURTHER ORDERED that plaintiff shall have thirty (30) days from the date of this Order to file a third amended complaint. Plaintiff is warned that failure to file an amended complaint by that time will result in the Court dismissing the action against defendant with prejudice.

IT IS FURTHER ORDERED that defendant serve a copy of this Order on plaintiff.

SO ORDERED.
S/ JOSEPH F BIANCO

JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: March 4, 2019
Central Islip, NY